THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.24644 OF 1995

DATED:07.11.2006

BETWEEN:

T.Sunil Kumar … Petitioner.

And

Life Insurance Corporation of India,
Rep., by its General Manager,
South Central Zone, Hyderabad.
And others.
… Respondents.

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ORDER:

The petitioner was appointed as sub-staff (attender) on daily wage basis in the office of Branch Manager of Siddipet branch of respondent No.1. According to the petitioner, he was first appointed in the month of April 1991 and was continued on daily wage basis upto the end of September, 1991. On 30.9.1991 the petitioner was given appointment order as temporary sub-staff for a period of 44 days and later on the same was extended through an order dated 16.11.1991 for a period of 21 days. The petitioner further claims that though there were no appointment orders issued later, the petitioner was continued as daily wage worker upto 21.5.1995 with breaks in service from time to time. The petitioner's grievance is that third respondent asked the petitioner to stop attending the duties without issuing any formal termination orders and his representation made to the respondents to continue him in the post and regularize his services as sub-staff did not meet with success. According to the petitioner, his discontinuance amounts to retrenchment and that it is in violation of the provisions of Section 25F of the Industrial Disputes Act (for short 'the Act') and the said retrenchment was not preceded by the requirements of one months notice or compensation in lieu of the said notice. The petitioner therefore, seeks the relief of the declaration that the action of

the respondent in retrenching the services of the petitioner after serving in the respondent-Corporation for more than four years without following the procedure laid in Section 25F of the Act as arbitrary, illegal and against the principles of natural justice and for a further direction to give all consequential benefits to the petitioners including the regularization of services, seniority and arrears of pay etc.

A counter affidavit was filed by Sri G.Rama Sheshagiri Rao, Secretary in the South Central Zone Office of the first respondent – Corporation. The claim of the petitioner that he was first appointed on daily wage basis in April 1991 and was continued till September 1991 is denied. According to the deponent of the counter affidavit, the petitioner was taken as casual labour on daily wage basis for intermittent spells during April 1991 to September, 1991 and that there was no letter of appointment issued in April 1991. It is further admitted in the counter that the first respondent Corporation issued a temporary letter of appointment for sub-staff for a period of 44 days; the petitioner accepted all the terms and conditions contained in the letter of appointment as temporary sub-staff and joined service on 7.10.1991; the period of 44 days came to end on 19.11.1991. It is further stated in the counter that the petitioner's temporary service was extended from 21.11.1991 to 11.12.1991 and his service as temporary sub-staff stood terminated at the close of office hours on 11.12.1991. The respondents have taken a specific stand in the counter affidavit that the petitioner was not appointed after the expiry of the period of 21 days on 11.10.1991. The respondents maintained that as the petitioner's term of appointment came to an end by efflux of time, the question of violation of Section 25F of the Act by the respondents does not arise.

It is also pleaded in the counter affidavit that the appointments in respondent – Corporation including the temporary appointments are

made by following specific procedure, namely, sponsoring of candidates by the employment exchange and holding of written test followed by interview for successful candidates and that therefore, the plea of the petitioner for regularization of his services cannot be countenanced.

Heard Sri M.Rama Rao, the learned counsel for the petitioner and Sri M.V.Suresh, the learned standing counsel for the respondents.

The learned counsel for the petitioner vehemently contends that the petitioner's services were terminated without following the mandatory procedure prescribed under Section 25F of the Act, in that, the petitioner was not given one month notice or he was not paid the wages in lieu of the notice. The learned counsel therefore, states that the petitioner's termination is liable to be declared as illegal and the petitioner is entitled to reinstatement.

I have perused the affidavit and the material papers filed by the petitioner. The affidavit singularly lacks in the plea that the petitioner in any calendar year has put in continuous service of 240 days. Under Section 25B (2) of the Act, a workman is deemed to be in continuous service under an employer, if he, during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of the workman employed below ground in a mine, and 240 days in any other case. To get any relief in this writ petition, it is therefore, necessary for the petitioner to plead and prove that during the period of his employment in the respondent – Corporation he had put in 240 days of service in any calendar year. Sri Rama Rao candidly admits that from the material that has been filed in this writ petition, there is nothing to show that the petitioner satisfies the requirement. At this stage, the learned counsel sought for

time to produce additional material, if any. I have declined this request for the reason that already 11 years had elapsed from the date of filing of the writ petition and it is not proper and appropriate at this stage to adjourn the case further for fishing out additional material, if any. If the petitioner was diligent, he should have produced all such material, which is relevant for the purpose of adjudication of the case in his favour.

Having regard to the fact that the petitioner failed to satisfy the requirement of continuous service for a period of 240 days during his employment, his contention that his alleged termination by the respondent is contrary to the provisions of Section 25F of the Act, cannot be accepted. As regards, the plea of regularization, this relief is sought for as a consequential benefit to the declaration that his retrenchment is contrary to the provisions of Section 25F of the Act. As the petitioner failed in getting the main relief itself, ordering regularization by way of consequential benefit does not arise. In any event, the petitioner has no legally enforceable right to claim regularization, because, the respondent pleaded that there is a procedure prescribed and being followed scrupulously by them in making permanent appointments. In the absence of any legal provision or a scheme framed by the respondent providing for regularization, this Court cannot grant any such relief to the petitioner.

For the aforementioned reasons, the writ petition is devoid of any merit and substance, hence, the same is dismissed but in the circumstances without costs.

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07.11.2006.

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